

April 19, 2018

Mr. Charles Brenton
Brenton Landscape Architecture, LLC
3120 St. Paul St. E310
Baltimore MD 21218

Re: Hunsberger Property, 2509 Cub Hill Rd. Parkville MD 21234
Forest Conservation Variance
Tracking # 03-17-2618

Dear Mr. Brenton:

A request for a variance from Baltimore County's Forest Conservation Law for the referenced property was received by the Department of Environmental Protection and Sustainability (EPS) on April 12, 2018. A forest retention investigation report was also submitted. The variance request proposes to remove 32 of 43 specimen trees on the property in order to construct a 19-lot residential subdivision and the associated infrastructure. This includes the following 28 trees in fair to good condition: 16 *Liriodendron tulipifera*, 11 *Quercus rubra*, and 1 *Quercus velutina*. The 4 additional trees proposed for removal are in poor condition and include 2 *Liriodendron tulipifera*, 1 *Quercus rubra*, and 1 *Quercus velutina*. All trees, with the exception of a *Quercus velutina* in good condition, are located within moderate and high priority forest. Of the 11 specimen trees to be retained, 3 are within required forest buffer, and 8 are located within proposed forest retention areas. The property drains to two Use I tributaries to Lower Gunpowder Falls.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One of the three criteria under Subsection 33-6-116 (d) must be met, and all three of the criteria under Subsection 33-6-116 (e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The applicant proposes to create 19 residential lots. Due to site constraints and infrastructure requirements, it appears that a major subdivision could not be constructed on the site without disturbance to moderate priority forest and removal of some specimen trees. However, the applicant has not provided alternate layouts and other information to support the necessity for the current layout and the associated forest and specimen tree impacts. Also, the petitioner would not be deprived of all beneficial use of the property if the requirement from which they seek a variance were imposed. Therefore, this criterion has not been met.

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The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. While this variance request concerns the site constraints and the location of the specimen trees on the property in relation to the layout provided for the proposed residential subdivision and the required infrastructure, alternate layouts and sufficient information to support the current layout and the associated forest and specimen tree impacts has not been provided. Therefore, this Department cannot currently determine that circumstances here are unique and unrelated to the general conditions of the neighborhood and this criterion has not been met.

The third criterion (Subsection 33-6-116 (d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The property is surrounded by single family residential developments, a church property to the east, and a townhouse community to the west. Forest along streams exists to the east and west. The proposed retention of forest and a forest buffer on the southwestern portion of this development will connect to forest currently retained on adjacent properties. However, because alternate layouts and sufficient information to support the current proposed impacts to forest and specimen trees has not been provided, the compatibility of the proposed subdivision with the character of the neighborhood cannot be determined at this time. Therefore, this criterion has not been met.

The fourth criterion (Subsection 33-6-116 (e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. Forest buffer non-disturbance areas to protect streams and wetlands are required, and retention of existing forest with reforestation adjacent to moderate priority forest is proposed on-site. Also, stormwater management is being provided for the development in accordance with current County regulations. However, the applicant has not demonstrated to the satisfaction of the Department how forest retention techniques have been investigated and why additional priority forest and specimen trees cannot be left in an undisturbed condition to maintain water quality benefits of existing forest and specimen trees. The applicant must show that reasonable efforts have been made to protect high and moderate priority forest and specimen trees, and must show that the plan cannot be reasonably altered. Additional subdivision layouts with supporting information have not been provided. Based on this, this criterion has not been met.

The fifth criterion (Subsection 33-6-116 (e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance, which is the result of actions taken by the petitioner. This request is based on the location of specimen trees in relation to the proposed site improvements, and there has been no work conducted on the property that would have required this request. However, alternate layouts and sufficient information to support the necessity for the current layout and the associated forest and specimen tree impacts has not been provided. Therefore, this criterion has not been met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Baltimore County Code Article 33, Title 6 Forest Conservation. The information provided for this project has

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not demonstrated to the satisfaction of the Department how forest retention techniques have been investigated, why additional priority forest and specimen trees cannot be left in an undisturbed condition, and that reasonable efforts have been made to protect high and moderate priority forest and specimen trees. Alternate layouts and sufficient information to support the current layout and the associated forest and specimen tree impacts has not been provided. Therefore, this criterion has not been met.

Based upon our review, this Department finds that the required variance criteria have not been met. Therefore, the requested variance is hereby denied, in accordance with Section 33-6-116 of the Baltimore County Code.

If you have any questions regarding this correspondence, please contact Paul Dennis at (410) 887-3980.

Sincerely yours,

David V. Lykens
Deputy Director

DVL/pad

c: Marian Honeczy MDDNR